

OFFICE OF THE GENERAL COUNSEL

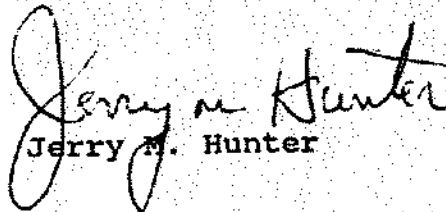
MEMORANDUM GC 91-5

June 18, 1991

TO: All Employees, Office of the General Counsel  
FROM: Jerry M. Hunter, General Counsel  
SUBJECT: Summary of Operations (Fiscal Year 1990)

Attached is a copy of the Summary of Operations for Fiscal Year 1990. As the summary reflects, we have had another outstanding year in our casehandling performance.

The Regional and Washington staffs deserve special recognition for their dedicated service to the public and their commitment to excellence as reflected in the attached Summary of Operations. Congratulations to all of you for another year of fine performance. Your performance is especially praiseworthy in view of the staffing and budgetary constraints under which you operated. You have truly earned my deepest respect and appreciation for your outstanding accomplishment and contribution to the mission of the Agency.

  
Jerry M. Hunter

Attachment

cc: NLRBU

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MEMORANDUM GC 91-5

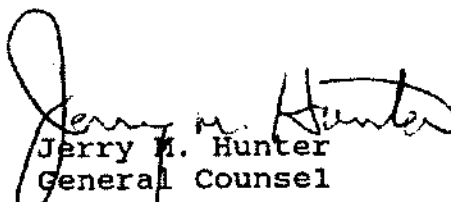
SUMMARY OF OPERATIONS  
FISCAL YEAR 1990

INTRODUCTION

This summary is a continuation of the General Counsel's practice of providing an annual overview of the operations of the Office of the General Counsel.

The record of performance achieved by the staffs of the Headquarters and Regional Offices of the General Counsel in Fiscal Year 1990 continued to be outstanding. In virtually all areas of performance, the staffs have met or exceeded the established performance goals. This level of excellence had been accomplished notwithstanding severe staffing and budgetary restraints, which makes this accomplishment all the more extraordinary.

I wish to take this opportunity to recognize this outstanding performance record and to express my sincere appreciation to each staff member for continued dedication and commitment to the work of this Agency. I also wish to express my gratitude to those who practice before us for the cooperation and assistance that they have extended to us in our efforts to effectively and efficiently administer the Act.

  
Jerry M. Hunter  
General Counsel

## ORGANIZATION OF THE OFFICE OF THE GENERAL COUNSEL

The Office of the General Counsel is composed of five major components or Divisions. These Divisions are responsible for the various casehandling, administrative and personnel functions of the office. The five Divisions are: The Division of Operations-Management and Regional Offices, the Division of Advice, the Division of Enforcement Litigation, the Division of Administration and the Office of Equal Employment Opportunity.

The Division of Operations-Management includes Headquarters and Regional Office staffs. The Headquarters staff has responsibility on behalf of the General Counsel for the operations of the Regional, Subregional and Resident Offices, and the coordination of the casehandling of those offices with the Washington Divisions of the Office of the General Counsel and the Board.

There are 33 Regional Offices, 2 Subregional Offices and 17 Resident Offices. Each Regional Office is headed by a Regional Director who is responsible for the management of the office and any attached Subregional or Resident Offices and for the investigation and initial determination of the merits of unfair labor practice cases and representation cases. The Regional Director is also responsible for processing requests for information under the Freedom of Information Act.

The Division of Advice has the function of rendering substantive legal advice to the General Counsel and to Regional Offices in cases which involve novel or complex issues, cases of national interest or cases which involve developing and changing areas of the law. The Division also processes requests for injunctive relief under Section 10(j) of the Act, litigates injunction cases in Federal appellate courts under Section 10(l) and 10(j) and indexes and classifies Board and Court decisions under the Act.

The Division of Enforcement Litigation is responsible for the Agency's litigation in the United States Court of Appeals, the Supreme Court of the United States and for contempt and miscellaneous litigation in Federal and State courts to protect the Agency's processes and functions. The Office of Appeals is a major component of the Division of Enforcement Litigation. This office reviews appeals from Regional Directors' refusals to issue complaint in unfair labor practice cases and recommends action to be taken thereon by the General Counsel. It also processes appeals from the Regional Directors' denials of FOIA requests.

The Division of Administration is under the general supervision of the General Counsel and has been delegated responsibility for the development, direction and coordination of administrative staff support functions for both the Board and the General Counsel.

The Office of Equal Employment Opportunity is under the direction of the Board and the General Counsel and is responsible for the development, monitoring and evaluation of the Agency's affirmative action program and the processing of internal complaints of discrimination.

### General Information

The information set forth below reflects the work of the various Divisions during this past fiscal year (FY 90). These statistics are preliminary and based on actions taken during the year. ,

### Regional Offices

As a result of a labor dispute between Greyhound Lines, Inc. (Greyhound) and the Amalgamated Council of Greyhound Local Unions (Union), the Union commenced a strike in March 1990. Since the commencement of the strike, in excess of 150 unfair labor practice charges involving 30 of the Agency's 33 Regional Offices have been filed against both Greyhound and the Union. Approximately 100 Board agents have been involved in the investigation of all these unfair labor practice charges. Over 1,000 affidavits and thousands of documents have been obtained and analyzed. Based on the investigations conducted thus far, merit has been found in a substantial number of these charges. With respect to unfair labor practice charges filed against the Amalgamated Council of Greyhound Local Unions and affiliated locals, the nationwide investigation revealed hundreds of instances of misconduct on and off the picket line, including but not limited to acts of shooting, physical attacks on employees and other persons, interference with the ingress and egress of persons and vehicles to and from the terminals, threats, destruction of property, and other acts of violence. Subsequently, the General Counsel authorized the issuance of a complaint and sought and obtained authorization from the Board for 10(j) injunctive relief to enjoin the Union and its agents from engaging in misconduct. However, prior to the Agency proceeding with the injunction, the Union entered into a formal settlement agreement in which the Union agreed to cease and desist from engaging in the alleged misconduct. The formal settlement agreement was approved by the Board on June 19, 1990, and enforced by the United States Court of Appeals for the Fifth Circuit on June 27, 1990. With respect to the unfair labor practice charges filed against Greyhound, a consolidated complaint issued on November 6, 1990, alleging that the Employer has engaged in numerous acts of unlawful conduct by, among other things, implementing certain bargaining proposals prior to the impasse; by interfering with the rights of strikers to engage in lawful picket line activities, and by terminating employees because of their union activities. The Agency investigated additional charges alleging, among other things, that Greyhound has unlawfully discharged over 200 employees because of their union related activities. A second consolidated complaint

issued on January 10, 1991, amending the complaint which had issued on November 6, 1990. The January 10, 1991 amended complaint includes allegations that Greyhound Lines, Inc., insisted to the point of impasse on unlawful bargaining proposals as well as additional allegations of unlawful interference with employees' rights to engage in union activities, including the discharge of over 200 strikers nationwide. The unfair labor practice hearing on these matters opened in our Milwaukee, Wisconsin, Regional Office on January 15, before Administrative Law Judge Robert Giannasi and is now scheduled to resume on May 6, 1991. The Agency is also involved in the bankruptcy proceedings involving Greyhound and is engaged in a massive nationwide effort to locate approximately 9,300 potential discriminatees. This herculean effort has required the mailing of 12,600 questionnaires in order to ascertain who the discriminatees are, as well as their interim earnings.

#### Case Intake

The NLRB has no authority to initiate proceedings on its own. Its processes can be invoked only by the filing of a charge or a representation petition by a member of the public. Total case intake during FY 90 was 41,204 compared to 40,878 cases in the previous year, representing a 0.8 percent increase in intake. Unfair labor practice case intake at 33,570 increased by 3.6 percent while representation case intake at 7,138 decreased by 9.7 percent below the previous year. In other types of cases filed (UD, AC and UC), there was a decrease from the previous year's intake with the filing of 496 such cases compared to 569 cases.

#### Regional Professional Staff and Productivity

The average professional staff to handle the workload in the Regional Offices during FY 90 was 973 compared to 983 in FY 89. In the area of productivity [the measure of average monthly output per regional professional during the year], FY 90 output per field professional per month increased to 135.3 units as compared to 128.2 units for FY 89. The productivity figure is affected by a number of factors including case intake, average professional staff, attrition and the settlement rate.

#### Information Officer Inquiries

The General Counsel's Public Information Program continued to successfully prevent a large number of clearly nonmeritorious cases from being filed with the Agency and continued to provide

assistance to members of the public by referring them to the appropriate agencies or organizations or by assisting them in filing charges with the NLRB, where appropriate. In FY 90, the total number of inquiries received through the Public Information Program was 218,873, an increase of 3.3 percent over the 211,934 inquiries received during FY 89. The rate of charge acceptance (percent of instances in which the contact results in a charge being filed) was 5.2 percent, as compared to 5.1 percent in FY 89. Since the inception of this program several years ago, the Agency has reduced its charge acceptance rate by 4 percent from 9.2 percent in 1980 to the current 5.2 percent rate. In terms of cases, this program in this year alone saved the Agency the cost and time of investigating approximately 8,750 no-merit cases.

#### Unfair Labor Practice Cases

##### Settlements

The Agency's effectiveness and efficiency in administering the Act is greatly enhanced by its ability to effect a voluntary resolution of meritorious unfair labor practice cases. Over the years, the Agency has had an excellent record in achieving this end. In FY 90, 9,432 settlements of unfair labor practice cases were obtained representing a rate of 91.5 percent as compared to 8,785 settlements in FY 89 and a rate of 89 percent.

##### Complaints

In FY 90, 3,241 complaints issued as compared to 3,226 in FY 89 which represents a 0.5 percent increase in the number of complaints issued. The median time to issue complaints was 45 days, the same median time achieved in FY 89.

##### Merit Factor

The percentage of unfair labor practice cases in which a Regional Director determines that formal proceedings are warranted is called the merit factor. In FY 90 that factor was 35.4 percent -- approximately the same as last year's merit factor of 35.7 percent. In general, over the years, the merit factor has fluctuated between 31 percent and 35 percent.

##### Litigation Results

Counsel for the General Counsel won 83.4 percent of Board and Administrative Law Judge decisions in whole or in part in FY 90,

essentially the same litigation success rate as the 83.6 percent litigation success rate attained in FY 89. The litigation success rate is a factor which permits an assessment of the quality of Regional investigations and litigation.

#### Remedies

In FY 90, \$68,694,080 was distributed to employees as backpay, representing a 17 percent increase over FY 89 in which \$58,728,116 was distributed. The amount paid out to employees in FY 90 as reimbursement of fees, dues, and fines was \$453,397 and represents a 12 percent decrease when compared to the \$515,478 disbursed in FY 89. In addition, in FY 90, 3,649 employees were offered reinstatement, as compared to 4,845 in FY 89 which represents a 24.7 percent decrease.

#### Representation Cases

##### Elections

The Regions conducted 4,304 initial elections in FY 90 of which 85 percent were held pursuant to agreement of the parties, compared to 4,391 initial elections and an 83.9 percent election agreement rate for FY 89. The median time to proceed to an election from the filing of a petition was 48.7 days, a slight increase from the 48.1 day median in FY 89.

##### Regional Director Decisions

In FY 90, Regional Directors issued 833 decisions in contested representation cases after hearing in a median of 44 days, bettering the goal of 45 days. This compares with FY 89, when 846 decisions were issued in a median time of 43 days.

##### Representation and Union Deauthorization Hearings

In this category, 1,040 initial hearings were held in FY 90 as compared to 1,130 in FY 89. The number of hearings held each year has declined over the last several years since they have been directly affected by case intake and the increase in election agreements.

##### Division of Enforcement Litigation

##### Appellate Court Activity

Intake and Productivity In FY 90, the Appellate Court Branch was responsible for handling 249 cases, 158 of which were referred by

the Regions for court enforcement and 91 cases in which petitions for review were filed by other parties. By filing briefs in 194 cases and securing compliance in another 133 cases, dispositions were made in 316 cases. In FY 89, total intake was 349 cases and dispositions totaled 316 cases. Oral arguments were presented in 145 cases in FY 90 compared with 156 cases in FY 89. The median time for filing applications for enforcement was 94 days in FY 89 compared with 56 days in FY 88. The median time for both enforcement and review cases, from the receipt of cases to the filing of briefs, was 183 days in FY 90 compared with 157 days for FY 89.

### Litigation Results

In FY 90, 161 cases were decided by United States Courts of Appeals compared with 180 cases in FY 89. Of these cases, 88.8 percent were won in whole or in part in FY 90 compared with an 87.2 success rate in FY 89. In FY 90, 3.7 percent were remanded entirely compared with 4.5 percent in FY 89. Also in FY 90, 7.5 percent were total losses, down from 8.3 percent in FY 89.

Special Litigation Activity In FY 90, the Special Litigation Branch had an intake of 79 cases and closed 90 cases. This compares with an intake of 100 cases and the closing of 92 cases in FY 89. Additionally, in FY 90, the Branch filed 83 briefs: 25 appellate court briefs, 43 district court briefs and 15 bankruptcy court briefs. This compares to FY 89 when the Branch filed 105 briefs, 23 to the appellate courts, 60 to the district courts and 22 to the bankruptcy courts. In FY 90, the Branch also participated in 25 oral arguments and received 42 decisions as follows: 7 bankruptcy decisions, winning 5 and losing 2, 16 district court decisions, winning 11, losing 5 and 19 appellate court decisions, winning 18 and losing 1.

Supreme Court Activity In FY 90, the Supreme Court decided one Board case which the Board won. The Board also participated as amicus in one case. In FY 89, the Supreme Court did not decide any Board cases. In FY 90, the Court denied 26 private petitions for certiorari and granted none; no Board petition were filed. In FY 89, the Court denied 19 private party petitions, and granted one Board petition.

Contempt Activity In FY 90, 137 cases were referred to the Contempt Litigation Branch for consideration for contempt or other appropriate action to achieve compliance with court decrees, compared to 113 cases in FY 89. Voluntary compliance was achieved in 13 cases during the fiscal year, without the necessity of



filing a contempt petition, while in 42 others, it was determined that contempt was not warranted. During the same period, 29 civil contempt proceedings were instituted as compared to 28 civil proceedings in FY 89. These included five motions for the assessment of fines, and four motions for writs of body attachment. In addition, two criminal contempt proceedings were initiated during the year. Twenty-five civil contempt or equivalent adjudications were awarded in favor of the Board, including four where the court ordered civil arrest and assessment of fines. During the fiscal year, the Contempt Litigation Branch collected \$120,800 in fines and \$303,308 in backpay, while recouping \$151,399 in court costs and attorneys' fees incurred in contempt litigation.

Appeals Activity In FY 90, the Office of Appeals received 3,525 appeals from Regional Directors' refusals to issue complaints, an increase of 54 from the 3,471 appeals received in FY 89. In FY 90, the office disposed of 3,475 appeals, exactly the same number as were decided in FY 89. The percentage of reversals of Regional Directors' dismissals was 2 percent, a decrease from the 3 percent reversed in FY 89. Median time to process appeals in FY 90 was 12 days, a reduction of 2 days from the 14-day median attained in FY 89.

#### The Division of Advice

During FY 90, the Advice Branch continued to make gains in the timely processing of cases. Thus, the median time for processing cases was 24 days, as compared to 25 days for the prior fiscal year. During the year, the Branch received 714 cases, closed 625 cases and the median age of cases pending at the end of the fiscal year was 25 days, the same median as the prior fiscal year.

#### Section 10(j) Injunction Activity

In FY 90, the Injunction Branch received 157 cases, as compared to the 163 cases received in the prior year. Section 10(j) relief was authorized in 41 cases, or 26 percent of the cases. In addition, of the cases brought to a conclusion during the fiscal year, the Agency was successful in 94 percent of the cases, i.e., in these cases the Agency achieved either a satisfactory settlement or a substantial victory in litigation. In FY 89, the Agency's success rate was 89 percent.

Section 10(1) Injunctive Activity

The Regional Offices filed 42 petitions for 10(1) injunctions with the appropriate district courts in FY 90, a 28.8 percent decrease from the 59 petitions filed in FY 89.

Injunction Branch Litigation

During FY 90, the Injunction Branch handled 120 cases in addition to the requests for Section 10(j) authorization. These cases involved appeals from district court decisions in 10(j) or 10(1) cases, contempt of district court decrees, and litigation advice to Regions in their litigation of 10(j) or 10(1) cases. In addition, the Branch directly handled 9 appeals that were pending at the beginning of the fiscal year and 15 appeals that were filed during the year. The Branch also directly litigated 4 district court matters. Of these 28 cases, the Branch won 5 and satisfactorily resolved 9 others before decision. Two cases were lost and 12 were pending decision at the end of the fiscal year. In FY 90, of the 10 cases that resulted in court decisions, 7 were won and 3 were lost. The Branch also authorized the Regions to institute contempt proceedings in 12 cases during FY 90.

Date: June 18, 1991